

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 25, 2006

BRYAN PEARSON v. STATE OF TENNESSEE

Appeal from the Circuit Court for Bledsoe County
No. 54-2005 Thomas W. Graham, Judge

No. E2005-02606-CCA-R3-HC - Filed May 25, 2006

The petitioner, Bryan Pearson, filed a 2005 Bledsoe County Circuit Court petition for habeas corpus relief from his 1993, guilty-pleaded, Knox County conviction of second degree murder and alleged that he was improperly sentenced. The 1993 Knox County judgment appended to the petition showed that the defendant was convicted of an offense occurring on March 29, 1989, and was sentenced pursuant to the 1982 sentencing act as a standard offender to a term of 25 years in the Department of Correction. The habeas corpus court entered an order summarily dismissing the petition, after holding that the petitioner's claims were previously adjudicated. We affirm the order.

Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Bryan Pearson, Appellant, Pro Se.

Paul G. Summers, Attorney General & Reporter; Leslie Price, Assistant Attorney General; and James Michael Taylor, District Attorney General, for the Appellee, State of Tennessee.

OPINION

The legal issues raised in a habeas corpus proceeding are questions of law, and our review of questions of law is de novo. *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000).

“[T]he writ of [habeas corpus] will issue in Tennessee only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired.” *State v. Ritchie*, 20 S.W.3d 624, 630 (Tenn. 2000) (quoting *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993)). “A void judgment is one

in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired." *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999).

A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Id.*; see *State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because in this case the trial court apparently had jurisdiction over the *actus reus*, the subject matter, and the person of the petitioner, the petitioner's jurisdictional issue is limited to the claim that the court was without authority to enter the judgment. See *Anglin*, 575 S.W.2d at 287 ("'Jurisdiction' in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned."); see *Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627. The invalidity of the sentence itself, as well as the broader invalidity of the conviction, results in a void judgment and is a sufficient basis for habeas corpus relief. See *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (stating that a void sentence, as well as a void conviction, may result in a void judgment and be the subject of a habeas corpus proceeding).

The procedures authorizing the use of the writ of habeas corpus are codified in Tennessee Code Annotated sections 29-21-101 through 29-21-130. The statutory procedures for seeking habeas corpus relief are mandatory and must be followed scrupulously. *Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). One requirement is that the petitioner must verify that "the legality of [his] restraint has not already been adjudged upon a prior proceeding of the same character." Tenn. Code Ann. § 29-21-107(b)(3) (2000).

A court may summarily dismiss a petition for habeas corpus relief without a hearing or the appointment of counsel when the petition sets forth no facts supporting the issuance of the writ. See *Randall Carver v. State*, No. M2002-02891-CCA-R3-CO, slip op. at 4 (Tenn. Crim. App., Nashville, May 16, 2003); see Tenn. Code Ann. § 29-21-109 (2000).

In the present case, the state invites this court to affirm the summary dismissal of the habeas corpus petition because it failed to comply with Code section 29-21-107(b)(3), requiring a verified statement as to whether the claim had been previously determined. We discern, however, that the basis for the habeas corpus court's dismissal of the petition was not the petitioner's failure to follow mandatory procedural requirements; rather, the court dismissed the petition because the legal issue presented actually had been previously determined. Accordingly, we address this basis for dismissal and "decline to base our decision to dismiss the petition upon the petitioner's failure to comply with the statutory procedure." See *Hickman*, 153 S.W.3d at 22 (declining to premise appellate adjudication on procedural noncompliance when the prosecution "did not move to dismiss Hickman's petition for procedural noncompliance even though it was prepared and filed by counsel [and] the trial court chose to adjudicate the petition on its merits and certainly acted within its discretion in doing so").

Moving to the issue at hand, we conclude that this court did previously determine that the petitioner was properly sentenced in 1993 pursuant to the 1982 sentencing act. *See Bryan Pearson v. State*, No. E2003-02597-CCA-R3-CD (Tenn. Crim. App., Knoxville, July 16, 2004), *perm. app. denied* (Tenn. 2004). In *Bryan Pearson*, an appeal in a habeas corpus action, this court said,

[T]he petitioner [has not] established that the trial court erroneously sentenced him under the wrong statute upon his conviction for second degree murder, a Class A felony. *See* Tenn. Code Ann. § 39-13-210. The record reflects that the conviction offense occurred in March 1989 and the petitioner was sentenced in August 1993. Pursuant to Tennessee Code Annotated Section 40-35-117(b) of the Tennessee Criminal Sentencing Reform Act of 1989, “any person sentenced on or after November 1, 1989, for an offense committed between July 1, 1982 and November 1, 1989, shall be sentenced under the provisions of this chapter.” The petitioner’s sentence to twenty-five years imprisonment is within the statutory range of fifteen to twenty-five years for a Class A felony as provided by Section 40-35-112(a)(1). The petitioner has established neither a void judgment nor an expired sentence.

Id., slip op at 2-3. This previous adjudication bars the habeas corpus petitioner from raising the issue anew in the petition now under review. *See Myers v. State*, 3 Tenn. Crim. App. 414, 462 S.W.2d 265, 269 (1970) (stating that appellant could not relitigate questions previously determined adversely to him in two separate habeas corpus cases by state and federal courts of competent jurisdiction); *Young v. State*, 539 S.W.2d 850, 854 (Tenn. Crim. App. 1976) (stating that “in contending that he was denied counsel at his parole revocation hearing, the petitioner is again attempting to relitigate this question which was previously determined adverse to him by a court of competent jurisdiction. This he may not do.”); *Long v. State*, 510 S.W.2d 83, 87 (Tenn. Crim. App. 1974) (“Indescribable chaos in the administration of criminal justice surely would be the inevitable consequence of . . . permitting convicted persons to raise repeatedly and without limitation questions previously and finally adjudicated adversely to [them].”).

Accordingly, the order of the habeas corpus court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE